

Appl. No. 10/600,875
Resp./Arndt. dated Aug. 15, 2005
Reply to Office Action of May 18, 2005

Remarks/Arguments

There are no amendments to the specification or the drawings hereinabove.

In the claims, Claims 1-25 remain and are pending in the application. Claims 12-20 are allowed. Claims 1, 3-8, 11 and 21-25 are rejected and Claims 2, 9 and 10 are objected to. Reconsideration is respectfully requested.

The Examiner rejected Claims 1, 3-8, 11 and 21-25 under 35 U.S.C. 102(b) as being anticipated by Urakami et al., U.S. Patent No. 6,794,909 (hereinafter 'Urakami et al.').

Applicant respectfully traverses the rejection of Claims 1, 3-8, 11 and 21-25 in view of Urakami et al. on the grounds that the reference is unavailable as a reference under 35 U.S.C. 102. In particular, Urakami et al. does not qualify as a reference under either 35 U.S.C. 102(b) or, perhaps more correctly, under 35 U.S.C. 102(e). Specifically, Urakami et al. does not represent a proper reference under 35 U.S.C. 102(b) since Urakami et al. did not issue as a patent before the filing date of the instant application. Furthermore, Applicant respectfully submits that Urakami et al. is neither (1) "an application for patent, published under section 122(b), by another filed in the United States before the invention by applicant of the invention" nor (2) "a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent" (from 35 U.S.C. §102(e)), as required for a reference to be cited in support of a rejection under 35 U.S.C. 102(e).

Applicant submits herewith as Appendix A, Declaration of Inventor pursuant to 37 CFR 1.131, antedating the critical date of Urakami et al. (i.e., Urakami et al. Foreign Application Priority date of Apr. 14, 2003). In particular, the Declaration of Inventor, signed by one of the named co-inventors of the instant invention, stipulates that the invention was conceived prior to the critical date of April 14, 2003. As such, at least conception occurred prior to April 14, 2003.

In addition, a computer simulation-based experimental prototype of the instant invention was created and tested before April 14, 2003. As such, both conception and an actual reduction to practice occurred prior to April 14, 2003.

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In support of the aforementioned Declaration of Inventor, Applicant provides evidence in the form of a Declaration of a Witness herewith as Appendix B. In the Declaration of a Witness, the witness, who is not a named co-inventor, stipulates to having witnessed the aforementioned invention conception prior to the April 14, 2003 critical date of Urakami et al. Further, Applicant provides herewith as Appendix C copy of an Invention Disclosure describing the instant invention that was written prior to the April 14, 2003.

Applicant submits that the above-referenced Declaration of Inventor as Appendix A meets the requirements of 37 CFR 1.131 for a "declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based" and that the Declaration of a Witness and the copy of the Invention Disclosure attached hereto as Appendices B and C, respectively, provide evidence supporting said Declaration of Inventor, under MPEP 715.07 Facts and Documentary Evidence, GENERAL REQUIREMENTS (allegations of fact supported by (F) "attached supporting statements by witnesses ..."). As such, it is respectfully submitted that the Urakami et al. reference is not prior art under 35 U.S.C. 102(e) and may not be used to support the rejection of Claims 1, 3-8, 11 and 21-25 under 35 U.S.C. 102(b). Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

The Examiner objected to Claims 2, 9 and 10 as being dependent upon rejected base claims. Applicant appreciates the Examiner's acknowledgement of the allowability of Claims 2, 9 and 10 if rewritten in independent form. However, in light of Applicant's remarks hereinabove, Applicant respectfully submits that Claims 2, 9 and 10 are in allowable form, as originally filed. Applicant respectfully defers rewriting these claims pending the Examiner's consideration of the remarks presented hereinabove for the respective base claims.

Further, Applicant appreciates the Examiner's allowance of Claims 12-20, as filed.


In summary, Claims 1-25 were pending. Claims 12-20 were allowed, Claims 1, 3-8, 11 and 21-25 were rejected, and Claims 2, 9 and 10 were objected to. It is

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respectfully requested that Claims 1-11 and 21-25 be allowed along with allowed Claims 12-20, and that the application be passed to issue at an early date.

Should the Examiner's action be other than allowance, the undersigned respectfully requests a telephone call from the Examiner to discuss further consideration that would expedite the prosecution of the application. Furthermore, should the Examiner have any questions regarding the above, please contact the undersigned, J. Michael Johnson, Agent for Applicant, at telephone number (775) 849-3085.

Respectfully submitted,
BLAINE STACKHOUSE ET AL.

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.


J. Michael Johnson

8/15/05
Date

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